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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.

Case No. 4:20-cv-05640-YGR-TSH

Plaintiff, Counter-defendant

APPLE INC.'S STATEMENT IN SUPPORT OF ADMINISTRATIVE MOTION TO SEAL

APPLE INC.,

The Honorable Thomas S. Hixson

Defendant, Counterclaimant

The Honorable Thomas S. Hixson

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3 *Vigdor v. Super Lucky Casino, Inc.*,
4 2018 WL 4510734 (N.D. Cal. Sept. 18, 2018).....3

5 *Vineyard House, LLC v. Constellation Brands U.S. Ops., Inc.*,
6 619 F. Supp. 3d 970 (N.D. Cal. 2021).....2

7 *Williams v. Apple Inc.*,
8 2021 WL 2476916 (N.D. Cal. June 17, 2021).....3

9 **Other Authorities**

10 Federal Rule of Civil Procedure 26(c)

11 Local Rule 79-5.....1

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1 Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Apple Inc. (“Apple”)
 2 submits this statement in support of Epic Games, Inc.’s Administrative Motion to Consider Whether
 3 Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5 (Dkt. 1363) (“Epic’s
 4 Motion”). Apple respectfully requests that the Court partially seal Exhibits A, B, C, and D to Epic’s
 5 Motion, because they contain information sealable under controlling law and Local Rule 79-5.

6 Exhibits A, B, C, and D contain personally identifiable information in the form of email addresses
 7 of Apple employees. Exhibits B and C contain competitively sensitive, non-public information
 8 regarding Apple’s financial information and internal project codenames, which Apple intends to keep
 9 confidential. Exhibit A contains excerpts from Apple’s privilege log prepared for the Special Masters
 10 conducting evaluation of the privilege claims stemming from Apple’s re-review. The privilege log
 11 entries are required to be filed under the terms of the Joint Stipulation and Order Approving Privilege
 12 Re-Review Protocol (Dkt. 1092) (the “Protocol”), but contain personally identifiable information in the
 13 form of email addresses of Apple employees.

14 Apple’s proposed redactions of Exhibits A, B, C, and D are indicated in the highlighted versions
 15 Apple has lodged with the Court, with copies provided to opposing counsel. Apple’s redactions to the
 16 trial exhibits, Exhibits B and C, are the redactions used by and agreed upon between the parties during
 17 the evidentiary hearing and in any post-hearing exhibit filings. Apple will file redacted versions of
 18 Exhibits A, B, C, and D publicly upon the Court’s ruling as to the proposed confidentiality designations.

19 **LEGAL STANDARD**

20 “The court may, for good cause, issue an order to protect a party or person from annoyance,
 21 embarrassment, oppression, or undue burden or expense,” including preventing the disclosure of
 22 information. *See Fed. R. Civ. P. 26(c)*. The Court has “broad latitude” “to prevent disclosure of materials
 23 for many types of information, including, *but not limited to*, trade secrets or other confidential research,
 24 development, or confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th
 25 Cir. 2002) (emphasis in original); *see also Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172,
 26 1178 (9th Cir. 2006) (compelling circumstances exist to seal potential release of trade secrets) (citing
 27 *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)); *PQ Labs, Inc. v. Qi*, 2014 WL 4617216,
 28 at *1 (N.D. Cal. Sept. 15, 2014) (granting multiple motions to seal where publication would lead to the

1 disclosure of trade secrets); *Apple Inc. v. Rivos, Inc.*, 2024 WL 1204115, at *1 (N.D. Cal. Mar. 21, 2024)
 2 (granting request to seal “internal product codenames” and noting that a prior request for the same had
 3 also been granted). Courts often find good cause exists to seal personally identifiable information. *See,*
 4 *e.g.*, *Snapkeys, Ltd. v. Google LLC*, 2021 WL1951250, at *3 (N.D. Cal. May 14, 2021) (granting motion
 5 to file under seal personally identifiable information, including email addresses and telephone numbers
 6 of current and former employees).

7 Although a party must show compelling circumstances to seal information appended to
 8 dispositive motions, the standard for non-dispositive motions is simply “good cause.” *In re Anthem, Inc.*
 9 *Data Breach Litig.*, 2018 WL 3067783, at *2 (N.D. Cal. Mar. 16, 2018); *Rembrandt Diagnostics, LP v.*
 10 *Innovacon, Inc.*, 2018 WL 1001097, at *1 (S.D. Cal. Feb. 21, 2018); *see DNA Genotek Inc. v. Spectrum*
 11 *Sols., L.L.C.*, 2023 WL 4335734, at *2 (S.D. Cal. May 10, 2023). In general, requests to seal information
 12 should be narrowly tailored “to remove from public view only the material that is protected.” *Ervine v.*
 13 *Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal. 2016); *Vineyard House, LLC v. Constellation Brands U.S.*
 14 *Ops., Inc.*, 619 F. Supp. 3d 970, 972 n.2 (N.D. Cal. 2021) (Gonzalez Rogers, J.) (granting a motion to
 15 seal “because the request is narrowly tailored and only includes confidential information”).

16 DISCUSSION

17 Apple seeks to seal the personally identifiable information, competitively sensitive non-public
 18 financial information, and competitively sensitive non-public project codenames in the exhibits to Epic’s
 19 Motion. *See* Perry Decl. ¶ 5.

20 Apple’s administrative motion to seal is subject to the “good cause” standard because it concerns
 21 non-dispositive objections related to discovery. *See, e.g.*, *Kamakana*, 447 F.3d at 1179 (“[T]he public
 22 has less of a need for access to court records attached only to non-dispositive motions because those
 23 documents are often unrelated, or only tangentially related, to the underlying cause of action.”); *Lee v.*
 24 *Great Am. Life Ins. Co.*, 2023 WL 8126850, at *2 (C.D. Cal. Nov. 13, 2023) (“Matters concerning
 25 discovery generally are considered nondispositive of the litigation” (quotation omitted)); *see also In re*
 26 *Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at *2; *Rembrandt Diagnostics, LP*, 2018
 27 WL1001097, at *1; *Al Otro Lado, Inc. v. Wolf*, 2020 WL 5422784, at *4 (S.D. Cal. Sept. 10, 2020).

28 Apple’s sealing request meets the good cause standard here. *Lamartina v. VMware, Inc.*, 2024

1 WL 3049450, at *2 (N.D. Cal. June 17, 2024) (good cause to seal internal email communications). Apple
 2 operates in an intensely competitive environment, and thus has taken extensive measures to protect the
 3 confidentiality of its information. *See Perry Decl.* ¶ 3. Disclosure of the highlighted information in
 4 Exhibits B and C relating to non-public sensitive financial information and confidential project
 5 codenames could harm Apple's business interests. *Id.* ¶ 5; *see also DNA Genotek Inc.*, 2023 WL
 6 4335734, at *2 (finding good cause where disclosure would “undercut” a party’s “position … in the
 7 marketplace”). Non-public financial information in particular is routinely sealed because it can expose
 8 sensitive information to a litigant’s competitors that would provide those competitors an unfair
 9 advantage in the future. *See, e.g., Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1225
 10 (Fed. Cir. 2013) (applying Ninth Circuit law and concluding that the district court abused its discretion
 11 in denying a motion to seal as to “profit, cost, and margin data”); *Vigdor v. Super Lucky Casino, Inc.*,
 12 2018 WL 4510734, at *2 (N.D. Cal. Sept. 18, 2018) (sealing “business and financial information relating
 13 to the operations of Defendants”); *Linex Techs., Inc. v. Hewlett-Packard Co.*, 2014 WL 6901744 (N.D.
 14 Cal. Dec. 8, 2014) (concluding that sensitive financial information falls within the class of documents
 15 that may be filed under seal). Additionally, courts in this district have found not only good cause, but
 16 compelling reasons exist to seal personally identifiable information, found in Exhibits A, B, C, and D.
 17 *See Snapkeys*, 2021 WL 1951250, at *3 (granting motion to file under seal personally identifiable
 18 information, including email addresses and telephone numbers of current and former employees); *see*
 19 *also UnifySCC v. Cody*, 2023 WL 7170265, at *1 (N.D. Cal. Oct. 30, 2023) (finding compelling reasons
 20 to seal personally identifying information of employees, including names, addresses, phone numbers,
 21 and email addresses).

22 Apple has narrowly tailored its sealing request to include only the information necessary to
 23 protect its confidential business information and personally identifiable information. *See Krommenhock*
 24 *v. Post Foods, LLC*, 2020 WL 2322993, at *3 (N.D. Cal. May 11, 2020) (granting motion to seal
 25 “limited” information); *see also Phillips*, 307 F.3d at 1211; *Williams v. Apple Inc.*, 2021 WL 2476916,
 26 at *2–3 (N.D. Cal. June 17, 2021) (noting Apple’s narrowed sealing requests with “tailored redactions”);
 27 Dkt. No. 643 at 3 (finding Apple’s proposed redactions appropriate for an exhibit when redactions were
 28 “narrowly tailored” to “sensitive and confidential information”). Apple has only partially redacted

1 limited information in the exhibits. *See* Perry Decl. ¶ 5.

2 For the foregoing reasons, there is good cause that warrants partially sealing Exhibits A, B, C,
3 and D to Epic's Motion.

4 **CONCLUSION**

5 Apple respectfully requests that the Court seal the information identified in the accompanying
6 declaration.

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9 Dated: March 24, 2025

Respectfully submitted,

10 By: /s/ Mark A. Perry
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